

HB 2347

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



ENROLLED

House Bill No. 2347

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed February 24, 1999

In Effect Ninety Days from Passage

ENROLLED
H. B. 2347

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed February 24, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section eleven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring state law-enforcement and corrections agencies to deliver persons who signed a waiver of extradition prior to their release and who have violated the terms of their probation, parole, bail or other conditional release to the demanding state without the requirement of a governor's warrant; setting forth the documentation required of the demanding state before the person is delivered to the demanding state; and clarifying the governor's authority to refuse a demand at his or her instance where a waiver has been executed.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-11. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

1 (a) A person brought into this state by, or after waiver of,
2 extradition based on a criminal charge, shall not be subject to
3 service of personal process in civil actions until he has been
4 convicted in the criminal proceedings, or, if acquitted, until he
5 has had reasonable opportunity to return to the state from which
6 he was extradited.

7 (b) Any person arrested in this state charged with having
8 committed any crime in another state or alleged to have escaped
9 from confinement, or broken the terms of his bail, probation or
10 parole may waive the issuance and service of the warrant
11 provided for in subsections (a) and (d), section eight of this
12 article, and all other procedure incidental to extradition pro-
13 ceedings, by executing or subscribing in the presence of a judge
14 of any court of record, within this state a writing which states
15 that he consents to return to the demanding state: *Provided,*
16 That before such waiver shall be executed or subscribed by
17 such person it shall be the duty of such judge to inform such
18 person of his rights with respect to the issuance and service of
19 a warrant of extradition and with respect to obtaining a writ of
20 habeas corpus as provided for in subsection (a), section nine of
21 this article.

22 If and when such consent has been duly executed it shall
23 forthwith be forwarded to the office of the governor of this state
24 and be filed by him in the office of the secretary of state. The
25 judge shall direct the officer having such person in custody to
26 deliver forthwith such person to the duly accredited agent or
27 agents of the demanding state, and shall deliver or cause to be
28 delivered to such agent or agents a copy of such consent:
29 *Provided,* That nothing in this subdivision shall be deemed to
30 limit the rights of the accused person to return voluntarily and
31 without formality to the demanding state, nor shall this waiver
32 procedure be deemed to be an exclusive procedure or to limit
33 the powers, rights, or duties of the officers of the demanding
34 state or of this state.

35 (c) Prior Waiver of Extradition. Notwithstanding any other
36 provision of this code, a law-enforcement or correction agency
37 in the state of West Virginia holding a person who is charged
38 by another jurisdiction with a violation of his or her terms of

39 probation, parole, bail or other form of conditional release in
40 another jurisdiction which is demanding the return of such
41 person shall immediately deliver the person to the duly autho-
42 rized agent of the demanding state, and without the requirement
43 of a governor's warrant, if such person has previously executed
44 a waiver of extradition as a condition of his or her current terms
45 of probation, parole, bail or other form of conditional release in
46 the demanding state and upon receipt of the following docu-
47 mentation from the demanding state:

48 (1) A certified copy of the previously executed waiver of
49 extradition being held by the officials in the demanding state or
50 an electronically or electromagnetically transmitted facsimile
51 thereof;

52 (2) A certified copy of an order or warrant from the
53 demanding state seeking the return of the person or an electron-
54 ically or electromagnetically transmitted facsimile thereof; and

55 (3) A photograph, fingerprints or other evidence which
56 identifies the person held by the law-enforcement or correction
57 agency as the person who signed the waiver of extradition and
58 who is named in the order or warrant, or an electronically or
59 electromagnetically transmitted facsimile thereof.

60 (d) Nothing in this article contained shall be deemed to
61 constitute a waiver by this state of its right, power or privilege
62 to try such demanded person for an offense committed within
63 this state, or of its right, power or privilege to regain custody of
64 such person by extradition proceedings or otherwise for the
65 purpose of trial, sentence or punishment for any offense
66 committed within this state, nor shall any proceedings had
67 under this article which result in, or fail to result in, extradition,
68 be deemed a waiver by this state of any of its rights, privileges
69 or jurisdiction in any way whatsoever.

70 (e) After a person has been brought back to this state by, or
71 after waiver of, extradition proceedings, he may be tried in this
72 state for any offense which he may be charged with having
73 committed here as well as that specified in the requisition for
74 his extradition.

75 (f) Nothing in this section shall be construed to limit the
76 authority of the governor, at his or her own instance, to refuse
77 to honor an extradition demand from another jurisdiction.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ray Schanover
Chairman Senate Committee

Joe F. Smith
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll B. Holmes
Clerk of the Senate

Bryson W. Snow
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Thomas H. Jones
Speaker of the House of Delegates

The within *approved* this the *10th*
day of *March*, 1999.

Jim Anderson
Governor

PRESENTED TO THE

GOVERNOR

Date 3/4/99

Time 9:55 am